IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.314 of 2003

1.Tolaram Budhia
2.Shivprakash Budhia
3.S.K.Agarwal
4.Manikchand Agarwal
5.Yudihsterial Agarwal
6.Ennore Steel Enterprises Ltd.
rep. by its Director
Shivprakash Budia
11 Government Palace
Calcutta .. Petitioners

vs.

Indian Bank
Harbour Branch
Chennai 600 001
rep., by its Manager
.. Respondents

Revision Petition filed under Article 227 of the Constitution of India against the order dated 17.10.2002, in M.A.No.167/2002, confirming the order dated 28.2.2002 passed in I.A.No.3310/2000, in O.A.No.459/01 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioners : Mr.Satish Parasaran
For Respondent : Mr.Jeyash Dolia, for
M/s.Aiyar & Dolia.

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ORDER:

This revision petition has been filed against the orders of the Debt Recovery Appellate Tribunal, Chennai made on 17.10.2002 in M.A.No.167/2002, confirming the order dated 28.2.2002 passed in I.A.No.3310/2000 in O.A.No.459/01.

2. The appellants in M.A.No.167/2002 are the revision petitioners.

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3. The respondent bank filed an Original Application No.547/1997 on the file of the Debts Recovery Tribunal, Chennai against the revision petitioners and two others for recovery of a sum of Rs.19,00,78,259.15 with further interest at 23.25% per annum with quarterly rests from the date of application till the date of realisation with costs and for sale of the application schedule properties. By order dated 30.11.1999 the Tribunal passed an exparte order against the revision petitioners and in favour of the respondent bank.

4. The 2nd revision petitioner who is the 3rd respondent in O.A.No.547/97 filed I.A.No.3309/2000 to suspend the operation of D.R.C.No.234/2000, dated 18.9.2000 and I.A.No.3310/2000 to set aside the exparte order dated 30.11.99.

5 By a common order dated 28.2.2002, the tribunal dismissed both the I.A.No.3309 and 3310 of 2000. Against the order dated 28.2.2002, an appeal was filed before the Debt Recovery Appellate Tribunal, Chennai and by order dated 17.10.2002 the appellate Tribunal dismissed the appeal filed in M.A.No.167/2002. Aggrieved by the order passed in M.A.No.167/2002, the above revision petition has been filed under Article 227 of the Constitution of India.

6. Heard the learned counsel for the revision petitioners and the learned counsel for the respondent. I have perused the documents and the judgments filed in support of their submissions.

7. Learned counsel for the revision petitioners submitted that no proper service was effected on the petitioners and in the absence of proper service on the petitioners, all further proceedings, award and recovery became a nullity in the eye of law. It is the case of the learned counsel for the revision petitioners that the respondent bank in spite of knowing the correct address of the petitioners as early as 1990, failed to take notice to the correct and proper address and both the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal failed to advert to this material fact.

8. Per contra, learned counsel for the respondent bank submitted that service was effected only on the last known address as given by them in the loan application and the revision petitioners had not intimated the respondent bank of any change in address. It is further informed by the learned counsel for the respondent bank that the property was sold in the auction pursuant to the issue of recovery certificate.

9. When I.A.Nos.3309 and 3310 of 2000 were filed before the Debt Recovery Tribunal, the Tribunal has gone through the records and found that when the defendants had changed the address, they ought to have intimated the new address to the bank and having not given any change of address, it is not for the revision petitioners to contend that they have

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not received summons. Moreover, the Tribunal adverted to the fact that defendants 1 to 4 in O.A.No.459/2001 were set exparte on 21.7.98, defendants 5 and 6 were set exparte on 15.2.98 and defendants 7 and 8 were set exparte on 19.2.99 and final order was passed on 30.11.99. But Applications in I.A.No.3309 and 3310 of 2000 were filed on 22.10.2000 without explaining the delay in filing the said Applications.

10. The Appellate Tribunal after going through the records found that only to the address given by the defendants to the bank, the bank has taken notice. Further the bank has also taken every step to take the notice to the defendants to the address given by them and only thereafter sought for substituted service by effecting publication in the newspaper, that too, newspaper issues at Chennai and Calcutta. The Appellate Tribunal has also considered the submissions made by the learned counsel for the bank that in pursuance of the recovery certificate issued, the property has been sold in an auction before dismissing the appeal.

11. In such circumstances, I do not find any illegality in the order passed by the Appellate Tribunal, confirming the order of the Debt Recovery Tribunal, warranting interference under Article 227 of the Constitution of India.

12. Therefore the Civil Revision Petition is dismissed as devoid of merits. No costs. C.M.P.Nos.3281 and 3282 of 2003 are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1. The Registrar,
The Debt Recovery Appellate Tribunal,
Chennai.

2. The Record Keeper,
V.R.Section, High Court, Madras.

C.R.P.(NPD)314/03.

GGK(CO)
RVL 04.11.2006

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